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In re:

1	Annette W. Jarvis, Utah Bar No. 1649
	Steven C. Strong, Utah Bar No. 6340
2	RAY QUINNEY & NEBEKER P.C.
_	36 South State Street, Suite 1400
3	P.O. Box 45385
	Salt Lake City, Utah 84145-0385
4	Telephone: (801) 532-1500
	Facsimile: (801) 532-7543
5	Email: ajarvis@rqn.com
	<del></del>
6	Lenard E. Schwartzer, Nevada Bar No. 0399
	Jeanette E. McPherson, Nevada Bar No. 5423
7	SCHWARTZER & MCPHERSON LAW FIRM
	2850 South Jones Boulevard, Suite 1
8	Las Vegas, Nevada 89146-5308
	Telephone: (702) 228-7590
9	Facsimile: (702) 892-0122
	E-Mail: bkfilings@s-mlaw.com
10	L Man. Oktimigowy illiaw.com
10	

Attorneys for Debtors and Debtors-in-Possession

### E-FILED ON June 27, 2007

## UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA

111 10.		
USA COMMERCIAL MORTGAGE COMPANY,		
	Debtor.	
In re:		
USA CAPITAL REALTY ADVISORS, LLC,		
	Debtor.	
In re:		
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,		
	Debtor.	
In re:		
USA CAPITAL FIRST TRUST DEED FUND, LLC,		
	Debtor.	
In re:		
USA SECURITIES, LLC,		
	Debtor.	
Affects:		
☐ All Debtors		
■ USA Commercial Mortgage Company		
☐ USA Securities, LLC		
☐ USA Capital Realty Advisors, LLC		
☐ USA Capital Diversified Trust Deed Fund, LLC		

Case No. BK-S-06-10725 LBR Case No. BK-S-06-10726 LBR Case No. BK-S-06-10727 LBR Case No. BK-S-06-10728 LBR Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**OPPOSITION TO JESSUPS' MOTION** TO DISCLOSE INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND RELEASE OF FUUNDS TO **JESSUP** 

(AFFECTS USA COMMERCIAL MORTGAGE AND USA CAPITAL FIRST TRUST DEED FUND, LLC)

Date: July 5, 2007 Time: 9:30 a.m.

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USA Commercial Mortgage Company ("USACM") and USA Capital First Trust Deed
Fund, LLC ("FTDF") hereby opposes the Jessups's Motion to Disclose Information Under the
Freedom of Information Act and Release of Funds to Jessups (the "Motion"). This Opposition is
supported by the documents attached hereto, the memorandum set forth below, and the entire
record in this case.

## STATEMENT OF FACTS

- 1 The Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan") was confirmed on January 8, 2007 and became effective on March 12, 2007. It has been substantially consummated.
- 2. The Jessups' IRAs were investors in FTDF. As such, these IRSa have received pro rata distributions from FTDF (in the same percentages as other investors in FTDF). Copies of the cancelled checks are attached as Exhibit "A".
- 3. As a result of the sale to Compass Partners, LLC pursuant to the Plan, there will be a substantial distribution to investors in FTDF including the Jessups' IRAs.
- 4. Under the Plan, the Jessups' IRAs are not entitled to payments other than the same payments as are being made to other investors in FTDF.
- With regard to disclosure of transactions, the Jessups have available to them the same information available to other investors in FTDF. Such information is available at the BMC website, http://www.bmccorp.net/master.asp?InfoType=1&ClientID=113, and the FTDF Official Committee website, http://usacapftdf.bmcgroup.com/default.aspx.

### **MEMORANDUM OF LAW**

A confirmed plan of reorganization is binding on all parties, including investors such as the Jessups' IRAs. Bankruptcy Code § 1141(a) provides:

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

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The Freedom of Information Act, 5 U.S.C. §552, is applicable to requests to federal government agencies. It is not applicable to bankruptcy estates, debtors, their counsel or agents.

## **CONCLUSION**

WHEREFORE, Debtors respectfully request that this Court enter an order denying the Motion.

Respectfully submitted this 27th day of June, 2007.

## /s/ Lenard E. Schwartzer

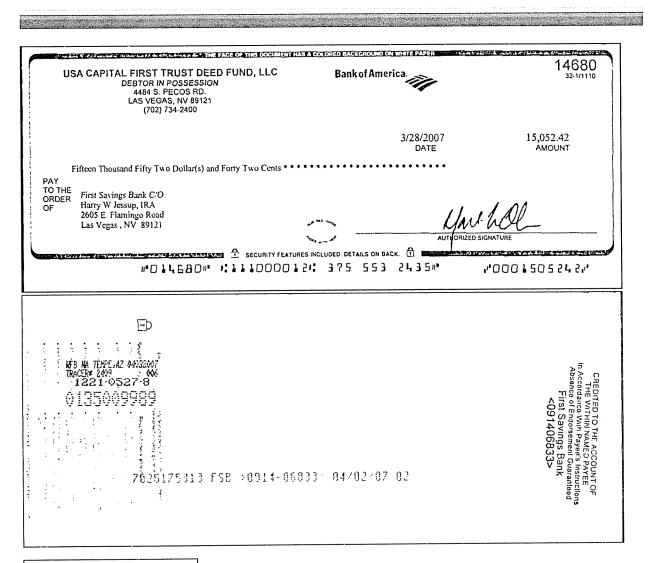
Lenard E. Schwartzer, Nevada Bar No. 0399 Jeanette E. McPherson, Nevada Bar No. 5423 SCHWARTZER & MCPHERSON LAW FIRM 2850 South Jones Boulevard, Suite 1 Las Vegas, Nevada 89146

and

Annette W. Jarvis, Utah Bar No. 1649 Steven C. Strong, Utah Bar No. 6340 RAY QUINNEY & NEBEKER P.C. 36 South State Street, Suite 1400 P.O. Box 45385 Salt Lake City, Utah 84145-0385

# EXHIBIT A



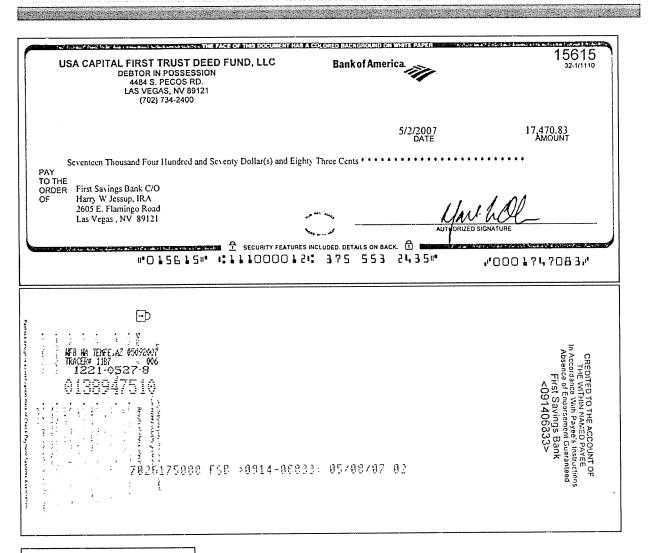


**Check Info** 

Account: 3755532435
Amount: 15,052.42
Check #: 14680
Posted Date: 04/04/2007

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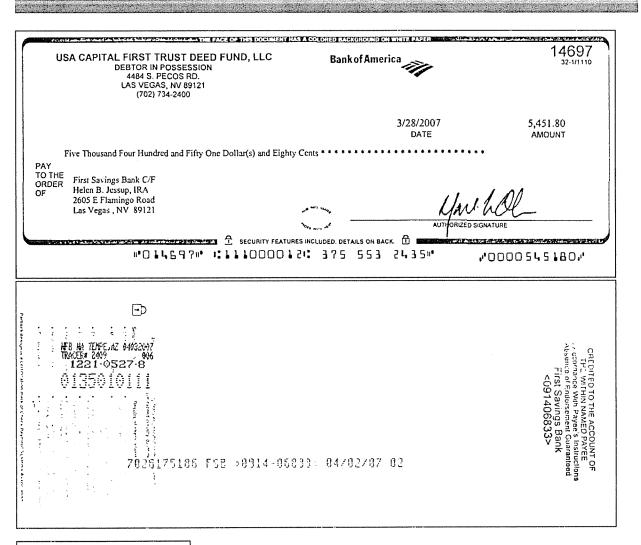




**Check Info** 3755532435 Account: 17,470.83 Amount: Check #: 15615 **Posted Date:** 05/10/2007

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**Check Info** 

**Account:** 3755532435

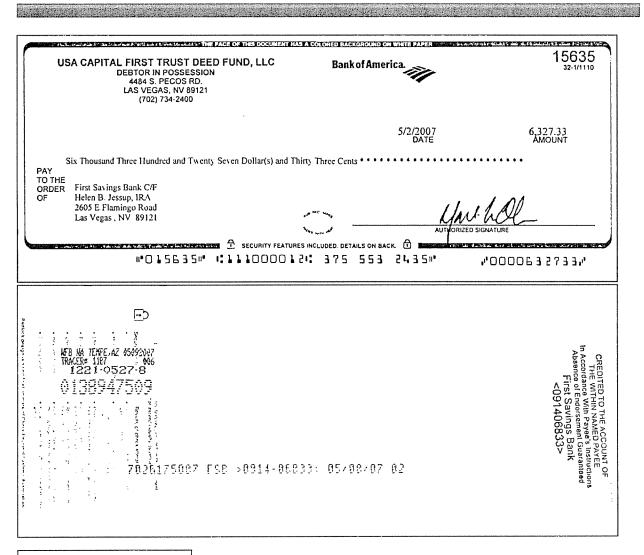
**Amount:** 5,451.80

Check #: 14697

Posted Date: 04/04/2007

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 Check Info

 Account:
 3755532435

 Amount:
 6,327.33

 Check #:
 15635

 Posted Date:
 05/10/2007

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